

IOWA STATE UNIVERSITY

Digital Repository

Volume 8 | Number 8

Article 2

4-11-1996

Cases, Regulations and Statutes

Robert P. Achenbach Jr.

Agricultural Law Press, robert@agrilawpress.com

Follow this and additional works at: <http://lib.dr.iastate.edu/aglawdigest>



Part of the [Agricultural and Resource Economics Commons](#), [Agricultural Economics Commons](#), [Agriculture Law Commons](#), and the [Public Economics Commons](#)

Recommended Citation

Achenbach, Robert P. Jr. (1996) "Cases, Regulations and Statutes," *Agricultural Law Digest*: Vol. 8 : No. 8 , Article 2.

Available at: <http://lib.dr.iastate.edu/aglawdigest/vol8/iss8/2>

This Article is brought to you for free and open access by the Journals at Iowa State University Digital Repository. It has been accepted for inclusion in *Agricultural Law Digest* by an authorized editor of Iowa State University Digital Repository. For more information, please contact digirep@iastate.edu.

perpetuities period to 90 years without adverse tax consequences.²¹ The regulations do not address the situation of perpetual trusts. Some believe that trusts governed by the law of a state which has abolished the Rule continue to be free of generation skipping tax as well as estate and gift tax so long as a donee does not exercise a special power of appointment.²²

In conclusion

For those wishing to take steps to assure that assets remain within the family, a dynasty trust may be an appealing alternative. Additional states are expected to join the ranks of those that have acted to permit the organization of trusts on a perpetual basis.

FOOTNOTES

- ¹ See, e.g. Dukeminier, "Dynasty Trusts: Sheltering Descendants from Transfer Taxes," 23 *Est. Plan.* 417 (1996). See generally 5 Harl, *Agricultural Law* § 44.08 (1996); Harl, *Agricultural Law Manual* § 5.04[6] (1996).
- ² See Tax Reform Act of 1986, Sec. 1433, 100 Stat. 2731 (1986).
- ³ See ns. 11-15 *infra*.
- ⁴ Tax Reform Act of 1986, Sec. 1431(a), 100 Stat. 2717 (1986), amending I.R.C. § 2631(a).

- ⁵ See I.R.C. § 2632.
- ⁶ See Treas. Reg. § 26.2632-1(a).
- ⁷ See I.R.C. § 2612(c).
- ⁸ I.R.C. § 2612(b).
- ⁹ I.R.C. § 2612(a).
- ¹⁰ See Gray, *Rule Against Perpetuities* (4th ed. 1942).
- ¹¹ Leach, "Perpetuities in a Nutshell," 51 *Harv.L. Rev.* 638, 639 (1938); Leach, "The Rule Against Perpetuities and Gifts to Classes," 51 *Harv.L. Rev.* 1329 (1938).
- ¹² 8B *Unif. Laws Ann.* 321 (1990).
- ¹³ S.D. Code Laws Ann. §§ 43-5-1, 43-5-8.
- ¹⁴ Wis. Stat. Ann. § 700.16.
- ¹⁵ Del. Code § 503(a).
- ¹⁶ *Id.*
- ¹⁷ Idaho Code § 55-111.
- ¹⁸ See ns. 11-15 *supra*.
- ¹⁹ See, e.g., *Spindle v. Shreve*, 111 U.S. 542 (1884). See also Restatement (Second) of Conflict of Laws § 280 (1971).
- ²⁰ Treas. Reg. § 26.2652-1(a)(6), Example 9.
- ²¹ Treas. Reg. §§ 26.2652-1(a)(4), 26.2652-1(a)(6), Example 10.
- ²² See Dukeminier, *supra* n. 1 at 423.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

FEDERAL TAXATION-ALM § 13.03[7].*

AUTOMATIC STAY. The taxpayer was a corporation which had filed for Chapter 11 on June 1, 1990. The debtor alleged that the IRS violated the automatic stay in filing levies against the debtor's assets and the debtor was entitled to damages, including attorney fees. The court held that, under Section 362(h), only individuals were entitled to sue for damages for violations of the automatic stay. In addition, the court held that the debtor failed to show any violation of the automatic stay. *In re Material Corp., Inc.*, 97-1 U.S. Tax Cas. (CCH) ¶ 50,296 (Bankr. N.D. Ill. 1997).

DISCHARGE. The debtor filed a Chapter 13 case on May 10, 1993. The debtor had filed an income tax return for 1991 in November 1992. The Chapter 13 case was dismissed 85 days later, prior to confirmation of the plan or any payments to creditors. The debtor filed the current Chapter 7 case on January 25, 1996, more than three years after the filing of the tax return for 1991. The IRS argued that the three year period of Section 507(a)(8) was tolled during the first Chapter 13 case, such that less than three years passed before the Chapter 7 filing, for the purposes of Section 507(a)(8). The court noted a conflict in the courts on this issue and held, with the majority of courts, that the Chapter 13 case tolled the limitation period of Section 507(a)(8). The court reasoned that a literal interpretation of Section 507(a)(8) would allow debtors to

manipulate the process to remove a tax liability by filing one case, waiting for a sufficient period and filing a second case more than three years after the tax return. The court did not discuss the opposing view that the IRS still has sufficient time to make an assessment and preserve the priority of the claim during the more than two years between the bankruptcy filings in this case. *In re McMillan*, 204 B.R. 835 (Bankr. M.D. Ga. 1996).

The debtor originally filed a Chapter 13 case which was converted to Chapter 11. The case was dismissed after the court revoked the Chapter 11 plan. The debtor later filed a Chapter 7 case more than three years after the timely filing of a tax return for 1987. The debtor failed to pay the 1988 taxes, however. After the debtor received a discharge in Chapter 7, the IRS applied against the 1987 taxes a refund claimed by the debtor. The debtor argued that the taxes were discharged in the Chapter 7 case because the return was filed more than three years before the Chapter 7 petition. The IRS argued that the Chapter 13/11 case tolled the three year limitation period of Section 507(a)(8). The court held that the limitation period was tolled by the Chapter 13/11 case because Section 507(a)(8) was intended by Congress to give the IRS three full years to make a collection of taxes. *In re Waugh*, 97-1 U.S. Tax Cas. (CCH) ¶ 50,304 (8th Cir. 1997), *aff'g*, 95-2 U.S. Tax Cas. (CCH) ¶ 50,576 (D. Minn. 1995).

The debtor had filed a previous Chapter 7 case in which the IRS had filed a secured claim for taxes,

supported by a tax lien on the debtor's assets, including the debtor's interest in an ERISA pension plan benefits. The debtor received a discharge in the Chapter 13 case, including tax claims. In the current chapter 13 case, the debtor sought to deny the IRS any claim for the same taxes, again secured by the tax lien. The court held that, although the taxes were discharged in the Chapter 7 case, the tax lien was not avoided; therefore, the lien survived the discharge and remained viable against the debtor's pension plan benefit payments. *In re Fuller*, 204 B.R. 894 (Bankr. W.D. Pa. 1997).

The debtor had been audited and the IRS issued a notice of deficiency for tax years 1980-1989. The debtor appealed the notice to the Tax Court which rendered a judgment against the debtor. The Tax Court judgment occurred more than 240 days before the debtor filed for Chapter 7. However, within the 240 days before the bankruptcy petition, the IRS issued Certificates of Assessment against the debtor for the amount of taxes determined by the Tax Court. The debtor argued that the Tax Court judgment should have been considered the date of assessment because the IRS was legally entitled to make the collection at that time. The court held that the definition of assessment under I.R.C. § 6203 controlled for purposes of a bankruptcy case and no assessment could have been made until the Certificate of Assessment was issued; therefore, the taxes were assessed within 240 days before the bankruptcy petition and were nondischargeable. *In re Hardie*, 204 B.R. 944 (S.D. Tex. 1996).

ESTATE PROPERTY. The debtor had owed federal employment taxes for the quarter ending June 30, 1994. The debtor wrote a check dated August 8, 1994 to the IRS for payment of the taxes but did not mail the check until August 12, 1994, one day after filing for Chapter 7. The bankruptcy trustee closed all of the debtor's bank accounts, causing the IRS check to not be honored by the bank. The debtor had granted to a creditor a blanket security interest in all of the debtor's assets. The IRS argued that under *Begier v. IRS*, 496 U.S. 53 (1990), the act of the debtor writing the tax check caused a trust to be created for the amount of the check and removed the funds from the bankruptcy estate. The court agreed that the attempt to make the tax payment created a trust but held that the IRS was prevented from recovering the funds because the IRS presented no evidence that the bank account on which the check was drawn had any funds in it when the check was written or received by the IRS. The court alternatively held that the trust was not created prior to the bankruptcy filing because the tax check was not mailed until after the petition was filed; therefore, the checking account funds became bankruptcy estate property prior to the creation of the tax trust. *In re Sunrise Paving, Inc.*, 204 B.R. 691 (Bankr. D. Md. 1996).

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE. The FCIC has adopted as final regulations which include the forage seeding endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. 62 Fed. Reg. 13289 (Mar. 20, 1997).

The FCIC has adopted as final regulations which include the forage crop endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. 62 Fed. Reg. 14283 (Mar. 26, 1997).

The FCIC has adopted as final regulations which include the fresh market tomato endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. 62 Fed. Reg. 14775 (Mar. 28, 1997).

The FCIC has adopted as final regulations which include the fresh market corn endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. 62 Fed. Reg. 14781 (Mar. 28, 1997).

The FCIC has adopted as final regulations which include the fresh market pepper endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. 62 Fed. Reg. 14786 (Mar. 28, 1997).

PERISHABLE AGRICULTURAL COMMODITIES ACT-ALM § 9.05.* The debtor had purchased agricultural commodities from a supplier. The supplier filed a notice of intent to preserve rights to the PACA trust for those commodities, claiming that the debtor failed to pay for the commodities. The debtor had agreed that most of the commodities had not be paid for but in filing for bankruptcy, the debtor's schedules of claims did not include \$5,810 worth of commodities for which the supplier had included in the PACA claim. The supplier filed a motion for summary judgment as to the amount of the PACA trust, based on the filed notice with the USDA and the debtor. The debtor argued that the filing of the claims schedules without \$5,810 of invoices raised an issue of material fact sufficient to deny the summary judgment motion. The court held that the claims schedules were sufficient to raise an issue of material fact because the schedules were filed under a sworn affidavit from the CEO of the debtor. *Matter of Magic Restaurants, Inc.*, 204 B.R. 862 (Bankr. D. Del. 1997).

The APHIS has adopted as final regulations under the Perishable Agricultural Commodities Act (PACA) implementing legislative changes granting the USDA the authority to adjust future license fees through "notice and comment" rulemaking; eliminate the requirement of filing

notice of intent to preserve trust benefits with USDA in the PACA trust; require USDA to receive a written complaint before initiating an investigation; require additional USDA investigation notification procedures; increase administrative penalties; establish civil penalties as an alternative to revocation or suspension of license; continue current filing fees for formal and informal reparation complaints; explicitly address the status of collateral fees and expenses; clarify misbranding prohibitions; and amend the provisions of PACA regarding the determination of responsibly connected individuals. **62 Fed. Reg. 15083 (March 31, 1997).**

SUGAR. The CCC has issued proposed regulations which redefine the crop year for the sugar loan program from the current period, July 1 through June 30, to the federal fiscal year, October 1 through September 30. The proposed rule also would extend the loan availability period to the whole fiscal year instead of ending the availability period on June 30. The restriction that the CCC could only make loans in July, August, and September on sugar processed from sugarcane or sugar beets that are normally harvested in those months would be removed. The proposed rule would also eliminate obsolete provisions governing the 1995 crop year price support program and producer protections and revise the information collection requirements to reflect the simplified monthly data-reporting forms and the transfer of reporting items to new annual reporting forms. **62 Fed. Reg. 15622 (April 2, 1997).**

TOBACCO. The FSA has issued interim regulations providing for special, but highly limited, combinations of flue-cured tobacco allotments and quotas of farms having production flexibility contracts under the Federal Agriculture Improvement and Reform Act of 1996 with farms without production flexibility contracts; and, for burley tobacco, an exemption to the loss of quota on farms with less than 1,000 pounds of quota when the farm would otherwise meet the requirements for a farm combination but for the existence of a production flexibility contract. **62 Fed. Reg. 15599 (April 2, 1997).**

The FSA has issued proposed regulations improving the administration of the tobacco marketing quota and price support program by amending program regulations to: (1) provide for making quota "inequity adjustments" on a "common ownership unit" basis rather than strictly on a "farm" basis; (2) eliminate unduly restrictive deadlines for the mailing of certain quota notices; permit, for burley and flue-cured tobacco, disaster transfers to be made by cash lessees, from cash rented farms, without the owner's signature; (3) provide greater flexibility in the setting of penalty amounts for burley and flue-cured tobacco violations; (4) eliminate a provision that requires yearly publication in the Federal Register of certain routine and noncontroversial penalty computations; (5) remove regulations governing the 1994-calendar year only "domestic marketing assessment", which was applicable to the use by certain cigarette manufacturers of

set percentages of domestic tobacco; and (6) codify certain statutory provisions concerning, and penalties related to, setting burley and flue-cured tobacco quotas. **62 Fed. Reg. 13546 (March 21, 1997).**

TUBERCULOSIS. The APHIS has adopted as final regulations changing Oklahoma from a modified accredited state to an accredited-free state. **62 Fed. Reg. 13293 (March 20, 1997).**

FEDERAL ESTATE AND GIFT TAX

GENERATION SKIPPING TRANSFERS-ALM § 5.04[6].* Two sets of trusts were created, two for each of three beneficiaries. Both sets of trusts had provisions allowing the beneficiaries to replace the trustee and the beneficiaries did petition a state court to have the beneficiaries made the trustee of their own trusts. The IRS ruled (see summary under Power of Appointment, *infra*) that the beneficiaries did not have a general power of appointment over trust corpus. The IRS also ruled that the appointment of the beneficiaries as trustees did not subject the pre-1985 trusts to GSTT. **Ltr. Rul. 9713008, Dec. 10, 1996**

IRA. The decedent had owned seven IRAs. Six of the IRAs had the decedent's spouse as the named beneficiary, but the seventh had no named beneficiary. The six IRAs had, by a default provision, elected to make post age 70 1/2 distributions calculated using the joint life expectancies of the decedent and spouse, but because the seventh had no named beneficiary, the distributions for that IRA had to be calculated using only the decedent's life expectancy. The decedent, however, had taken one year's distributions from all seven IRAs using the joint life expectancy, resulting in a less than minimum distribution from the seventh IRA. The decedent's estate made a withdrawal from the seventh IRA sufficient to make the withdrawal meet the minimum distribution requirement. The IRS ruled that the estate was not required to make a complete distribution from the seventh IRA but that the estate would need to make all future distributions based solely on the decedent's life expectancy at the time the distributions began. **Ltr. Rul. 9712032, Dec. 23, 1996.**

The decedent had owned an IRA and had reached age 70 1/2 two years before death and had started receiving distributions. The decedent died in 1995 but the 1995 distributions were not made until 1996 because the state probate court refused to release the funds until it was certain the funds were not part of the decedent's estate. The decedent's spouse was named beneficiary of the IRA and received the 1995 distributions in 1996. The IRS ruled that because no distributions were made in 1995, the spouse was deemed to have elected to treat the decedent's IRA as belonging to the surviving spouse. Thus, the initial distribution year for the surviving spouse was 1996 as to

the rolled over IRA from the decedent's IRA. **Ltr. Rul. 9713005, Jan. 3, 1997.**

POWER OF APPOINTMENT. Two sets of trusts were created, two for each of three beneficiaries. The first set contained a provision allowing the trustee to distribute trust principal to a beneficiary for the beneficiary's support, care, maintenance and education after taking into account the beneficiary's other income. The second set allowed the trustee to distribute principal for the beneficiary's care, maintenance and support. Both trusts had provisions allowing the beneficiaries to replace the trustee and the beneficiaries did petition a state court to have the beneficiaries made the trustee of their own trusts. The IRS ruled that the beneficiaries did not have a general power of appointment over the trusts' assets because distribution of principal was restricted by an ascertainable standard. **Ltr. Rul. 9713008, Dec. 10, 1996.**

TRANSFeree LIABILITY. The taxpayer was the surviving spouse of the decedent and acted as executrix of the estate. After the IRS began investigating the tax liability of the decedent, the taxpayer transferred estate property to the taxpayer's new husband for little or no consideration. The court held that the transfers from the estate and transfers to the second husband were fraudulent in that they were made with the intent to hinder the IRS. The court held that the spouse and second husband were personally liable for the decedent's income and estate taxes. The husband was held to be liable because of knowledge of the purpose of the transfers and the failure to pay consideration for the property received from the spouse. **Pert v. Comm'r, T.C. Memo. 1997-150.**

FEDERAL INCOME TAXATION

BAD DEBT. From 1982 through 1986, the taxpayer loaned a total of \$5,000 to another person. The debtor repaid a portion of the debt immediately but made no additional payments until 1992 through 1995 when the loan was completely repaid. In 1991 the debtor informed the taxpayer that the debtor did not have sufficient income to repay the loan. The taxpayer did not take any action to collect the debt in 1991. In 1991, the taxpayer claimed a bad debt deduction for the balance of the loan. The court denied the deduction because the taxpayer failed to provide any evidence that, in 1991, the loan was worthless. **Fohrmeister v. Comm'r, T.C. Memo. 1997-159.**

BUSINESS EXPENSES. The IRS has issued proposed regulations governing the substantiation requirements for certain business expenses. I.R.C. § 274(d) disallows a trade or business deduction under I.R.C. § 162 for any traveling (including meals and lodging), entertainment, gift, or listed property expense, unless the taxpayer substantiates the elements of the expense by adequate records or by sufficient evidence. Under Treas. Reg. § 1.274-5T(c), a taxpayer must

maintain two types of records to satisfy the "adequate records" requirement: (1) a summary of expenses (account book, diary, log, statement of expense, trip sheets, or other similar record), sometimes called an expense account or expense voucher, and (2) documentary evidence (such as receipts or paid bills). Together, these records must establish the elements of amount, time, place, and business purpose (and for gifts and entertainment, business relationship of recipient or persons entertained) for each expenditure or use. Treas. Reg. § 1.274-5T(c)(2)(iii) generally requires that a taxpayer have a receipt or other documentary evidence to substantiate (1) any expenditure for lodging and (2) any other expenditure of \$25 or more. In *Notice 95-50, 1995-2 C.B. 333*, the IRS announced that it would raise the receipt threshold of Treas. Reg. § 1.274-5T(c)(2)(iii)(B) from \$25 to \$75, effective for expenses incurred on or after October 1, 1995. The proposed regulations effect this amendment by changing "\$25" in Treas. Reg. § 1.274-5T(c)(2)(iii)(B) to "\$75." This change is applicable to both deductions and reimbursement arrangements and is expected to reduce the recordkeeping burden on affected taxpayers, including individuals and small businesses. **62 Fed. Reg. 13988 (March 25, 1997).**

The taxpayer was a psychiatrist who was employed in California where the taxpayer worked for three days a week for 11 months. The taxpayer's family resided in Chicago and the taxpayer also maintained a private practice for one day per week in Chicago. The taxpayer claimed business expenses for rent, phone, and automobile expenses. The court upheld the IRS denial of most of the deductions because the taxpayer failed to provide any written substantiation of the amount and purpose of the expenses. **Ziporyn v. Comm'r, T.C. Memo. 1997-151.**

CASUALTY LOSSES. The President has declared certain areas of Tennessee as disaster areas from February 28, 1997 storms. Losses from these casualties may be deducted in taxpayers' 1996 returns.

In 1991, the taxpayer moved to a new residence and hired a moving company to move the taxpayer's personal property. The taxpayer disputed the charges for the move and refused to pay the mover the amount charged. The mover placed the taxpayer's property in storage. The taxpayer claimed a casualty loss for the value of the property held by the mover. The taxpayer admitted that there remained a possibility of recovering the property. The court held that no deduction was allowed because the taxpayer had the possibility of recovery of the property. **Fohrmeister v. Comm'r, T.C. Memo. 1997-159**

DEPRECIATION. The taxpayer purchased a chlor-alkali system under a sale/lease agreement. The system was placed in operation, but because of mechanical problems, the system never became fully operational. The taxpayer claimed depreciation for the system for three tax years. The seller agreed to forgive the balance of the purchase price in exchange for return of the system. The

court held that the taxpayer was entitled to the depreciation deduction because the system was placed in service during the years the deduction was claimed, even though the system did not function because of mechanical problems. **Sands v. Comm'r, T.C. Memo. 1997-146.**

DISCHARGE OF INDEBTEDNESS. The taxpayer purchased a chlor-alkali system under a sale/lease agreement. The system was placed in operation, but because of mechanical problems, the system never became fully operational. The taxpayer claimed depreciation for the system for three tax years. The seller agreed to forgive the balance of the purchase price in exchange for return of the system. The court held that the return of the system constituted a sale or exchange with discharge of indebtedness from the forgiveness of the debt. The court held that the taxpayer recognized gain to the extent of the amount of debt forgiven over the adjusted basis of the system. **Sands v. Comm'r, T.C. Memo. 1997-146.**

GROSS INCOME. The taxpayer was employed as a manager for a real estate developer. The taxpayer received wages for the employment and also received "advances" which were not included in gross income. The taxpayer claimed that the advances were loans. The court held that the advances were compensation and not loans because (1) the advances were from an employer to an employee, (2) the wages received were much less than the taxpayer's previous employment, (3) the advances started with the taxpayer's employment, (4) the amount of the advances was pre-set by agreement, (5) the advances were paid in regular monthly intervals, (6) the advances had no set repayment terms or interest charged, (7) none of the advances had been repaid, (8) the taxpayer presented no evidence of ability to repay the advances, (9) the employer did not check the taxpayer's credit status nor require any collateral, (10) the value of the taxpayer's services exceeded the wages paid, and (11) the advances would not have been paid after termination of the taxpayer's employment. **Sheldon v. Comm'r, T.C. Memo. 1997-132.**

S CORPORATIONS-ALM § 7.03[2][c].*

BUILT-IN GAINS. The taxpayer was a C corporation which owned timber land. The taxpayer harvested timber from the land and purchased timber from third parties for use in the taxpayer's manufacturing business. The taxpayer planned to form a new corporation to which it will transfer all of its operating assets. The taxpayer's shareholders would sell all of their stock to the taxpayer which would contribute the stock to the new corporation. The new corporation would then make an S corporation election and an election under I.R.C. § 631(a) under which timber cut under a contract can be treated as sold or exchanged in the year the timber is cut. The IRS ruled that the taxpayer's gain under I.R.C. § 631(a) during the built-in gains recognition period of I.R.C. § 1374 was not subject to the tax of Section 1374. The IRS also ruled that the taxpayer's income from processing and selling products from trees harvested during the recognition

period was not subject to the tax of Section 1374. In addition, the IRS ruled that the taxpayer's income from processing and selling products from trees purchased from third parties during the recognition period was not subject to the tax of Section 1374. **Ltr. Rul. 9712028, Dec. 23, 1996.**

The taxpayer was an S corporation which owned timber land from which it harvested timber for use in its manufacturing business. The corporation had made an election in 1940 under I.R.C. § 631(a) under which timber cut under a contract can be treated as sold or exchanged in the year the timber is cut. The IRS ruled that the taxpayer's gain under I.R.C. § 631(a) during the built-in gains recognition period of I.R.C. § 1374 was not subject to the tax of Section 1374. The IRS also ruled that the taxpayer's income from processing and selling products from trees harvested during the recognition period was not subject to the tax of Section 1374. **Ltr. Rul. 9712027, Dec. 23, 1996.**

REORGANIZATION. An S corporation was owned by two brothers and operated a farming business. Because of disputes between the shareholders as to the management of the business, the corporation was split into two corporations by first distributing assets to the new corporation in exchange for stock and then distributing stock to the new shareholder. Thus, the stock of both corporations was momentarily owned by the original corporation and technically disqualified the corporation for S corporation status. The IRS ruled that the reorganization qualified as a "Type D" reorganization for tax-free treatment and carryover of holding periods and basis of assets and did not disqualify the original corporation for S corporation status. **Ltr. Rul. 9713020, Dec. 30, 1996.**

SAFE HARBOR INTEREST RATES

	April 1997			
	Annual	Semi-annual	Quarterly	Monthly
Short-term				
AFR	5.91	5.83	5.79	5.76
110% AFR	6.51	6.41	6.36	6.33
120% AFR	7.12	7.00	6.94	6.90
Mid-term				
AFR	6.49	6.39	6.34	6.31
110% AFR	7.15	7.03	6.97	6.93
120% AFR	7.82	7.67	7.60	7.55
Long-term				
AFR	6.88	6.77	6.71	6.68
110% AFR	7.59	7.45	7.38	7.34
120% AFR	8.28	8.12	8.04	7.99

TAX LIEN. The taxpayers, husband and wife, owed taxes for tax years 1984 through 1990. Most of the taxes were discharged in a bankruptcy case; however, the tax liens were not avoided in the case. The taxpayers sold their home to the husband's parents for \$15,000 and rented the house from the parents for a monthly rent equal to the loan payments of the parents for the loan acquired to raise the purchase price. The evidence showed that the house and land would appraise for \$27,000, although the property was deteriorating. The IRS perfected its tax lien

after the sale by a filing in the county where the residence was located. The court found that the parents paid a reasonable consideration for the property and that the sale was not subject to the tax lien because the sale was made to a bona fide purchaser prior to the perfection of the lien. **United States v. Thompson, 97-1 U.S. Tax Cas. (CCH) ¶ 50,270 (S.D. Ala. 1997).**

After October 5, 1987, the IRS had filed tax liens against the taxpayer's real property for taxes owed for 1982 through 1990. The IRS sent the notices to the taxpayer's previous mailing address. The taxpayer claimed to have telephoned the IRS with a new address on October 5, 1987 and argued that the post-October 5, 1987 tax lien filings were invalid because they were not sent to the taxpayer's current address. The court found that the taxpayer had continued to use the previous address on the 1987 and later income tax returns; therefore, the court held that the tax liens were valid in that the IRS was entitled to rely on the address given on the returns as the taxpayer's current address. **Weldon v. Comm'r, 97-1 U.S. Tax Cas. (CCH) ¶ 50,273 (E.D. N.C. 1997).**

TRAVEL EXPENSES. The taxpayer was a psychiatrist who was employed in California and where the taxpayer worked for three days a week for 11 months. The taxpayer's family resided in Chicago and the taxpayer also maintained a private practice for one day per week in that city. The taxpayer claimed deductions for the cost of travel to California and back to Chicago. The court held that the taxpayer's principal place of business during the year was California because the taxpayer spent most of the employment time there and earned more income there. **Ziporyn v. Comm'r, T.C. Memo. 1997-151**

SECURED TRANSACTIONS

FEDERAL FARM PRODUCTS RULE. The Grain Inspection, Packers and Stockyards Admin. has adopted as final regulations relating to the establishment and management of statewide central filing systems as they pertain specifically to the filing of "effective financing statements" for "farm products" as defined in section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631) by allowing electronic filing of effective financing statements without the prior signature of the debtor provided State law authorizes such a filing. **62 Fed. Reg. 15363 (April 1, 1997).**

PROCEEDS. The debtor purchased several loads of hogs from a hog producer. The debtor had granted a security interest in all assets to another creditor. The debtor did not pay for the hogs upon delivery and the debtor sought delivery of more hogs on a "custom kill" basis. The hog producer declined the offer until the previous hogs were paid for. The debtor attempted a prepetition payment for the hogs but the check was not cashed at the request of the debtor. The debtor then filed for Chapter 7 and sent another check to the producer postpetition. The creditor sought recovery of the check for the

hogs, arguing that its security interest had priority over the producer's interest in the proceeds. The producer did not have a perfected security interest in the hogs, nor did the producer possess a valid Packers and Stockyards trust claim against the debtor. The debtor argued that the hogs were obtained through a "custom kill" agreement, but the court held that the debtor failed to demonstrate the existence of such an agreement because testimony of the producer was that no custom kill agreement could be reached until the debtor paid for the delivered hogs. The debtor also argued that the security interest did not apply to the hogs because the hogs were not delivered to a plant covered by the security agreement. The court held that the hogs became accounts receivable and subject to the security interest in accounts receivable. The debtor also argued that the proceeds of the hogs were unidentifiable because the proceeds were commingled with the debtor's other assets. The court found that the evidence showed that the debtor used the proceeds of the sale of the hogs to pay the producer; therefore, the court held that the creditor was able to identify the proceeds of the hogs sufficient to claim a security interest in the proceeds. **In re Jack-Rich, Inc., 204 B.R. 709 (Bankr. C.D. Ill. 1997).**

STATE REGULATION OF AGRICULTURE

FEEDLOTS. The plaintiff operated a feedlot within the defendant's jurisdiction. The defendant county passed a Livestock Manure Management Ordinance which included several requirements not in the state statute governing feedlots in that the county ordinance mandated setbacks, perimeter tile monitoring, three-year permit limitation and a bond requirement. The county applied to the Minnesota Pollution Control Agency (MPCA) for approval of the ordinance and the right to issue permits under the ordinance. The MPCA approved the application. The plaintiff argued that the state statute preempted the field of feedlot regulation; therefore, the additional requirements in the county ordinance were invalid. The court found that the statute, Minn. Stat. § 116.07, specifically provided for counties to provide additional requirements for feedlot permits subject to approval by the MPCA, as was obtained by the county. The plaintiff also argued that the ordinance conflicted with the statute, but the court held that the ordinance did not restrict activities which the statute expressly permitted; therefore, the court held that the ordinance was not preempted by the statute. **Blue Earth Pork v. County of Blue Earth, 558 N.W.2d 25 (Minn. App. 1997).**

CITATION UPDATES

Est. of Bowgren v. Comm'r, 105 F.3d 1156 (7th Cir. 1996) (gross estate) see p. 37 *supra*.

Hyde v. United States, 950 F. Supp. 418 (D. N.H. 1996) (gross estate) see Vol. 7 p. 161.

AGRICULTURAL LAW PRESS ON THE WEB

<http://members.aol.com/aglaw/agpub>

Check out our internet site for information about:

- *Agricultural Law Manual*, by Neil E. Harl, a comprehensive, annotated looseleaf deskbook.

- *Principles of Agricultural Law*, a comprehensive annotated college textbook, by Roger A. McEowen and Neil E. Harl.

- **Seminar in Paradise**, "Farm Estate and Business Planning," by Neil E. Harl in Hawaii, January 5-9, 1998.

- Direct internet links to free legal resources on the internet.

- Direct email link to the Agricultural Law Press.

We welcome any suggestions for improving our web site.

AGRICULTURAL LAW MANUAL

by Neil E. Harl

This comprehensive, annotated looseleaf manual is an ideal deskbook for attorneys, tax consultants, lenders and other professionals who advise agricultural clients. The book contains over 900 pages and an index.

As a special offer to Digest subscribers, the *Manual* is offered to new subscribers at \$115, **including at no extra charge updates published within five months after purchase**. Updates are published every four months to keep the *Manual* current with the latest developments. After the first free update, additional updates will be billed at \$100 per year or \$35 each.

For your copy, send a check for \$115 to Agricultural Law Press, P.O. Box 50703, Eugene, OR 97405.

Satisfaction guaranteed. 30 day return privilege.

ISSUE INDEX

Bankruptcy

Federal taxation

Automatic stay **58**

Discharge **58**

Estate Property **59**

Federal Agricultural Programs

Crop insurance **59**

PACA **59**

Sugar **60**

Tobacco **60**

Tuberculosis **60**

Federal Estate and Gift Tax

Generation skipping transfers **60**

IRA **60**

Power of appointment **61**

Transferee liability **61**

Federal Income Taxation

Bad debt **61**

Business expenses **61**

Casualty losses **61**

Depreciation **61**

Discharge of indebtedness **62**

Gross income **62**

S corporations

Built-in gains **62**

Reorganization **62**

Safe harbor interest rates

April 1997 **62**

Tax lien **62**

Travel expenses **63**

Secured Transactions

Federal farm products rule **63**

Proceeds **63**

State Regulation of Agriculture

Feedlots **63**



Printed on recycled
paper using soy ink.